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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-988]

Silica Bricks and Shapes from the People's Republic of China: Initiation of Antidumping Duty Investigation

EFFECTIVE DATE: [Insert date of publication in *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen or Rebecca Pandolph, AD/CVD Operations, Office 4, (202) 482-2769 or (202) 482-3627, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On November 15, 2012, the Department of Commerce ("Department") received a petition concerning imports of silica bricks and shapes ("silica bricks") from the People's Republic of China ("PRC") filed in proper form by Utah Refractories Corporation ("Petitioner").¹ On November 16, 2012, Petitioner re-filed the petition to correct the bracketing of business proprietary information in certain exhibits. On November 19, 2012, the Department issued a supplemental questionnaire requesting information and clarification of certain areas of the Petition. Petitioner timely filed additional information on November 21, 2012 ("Lost Sales and Revenue Supplement") and November 26, 2012 ("First Supplement to the Petition"). At the Department's request, Petitioner filed additional information on November 28, 2012 ("Second Supplement to the Petition"). At the Department's request, Petitioner filed further information on December 4, 2012.

¹ See Petition for the Imposition of Antidumping Duties: Silica Bricks and Shapes from the People's Republic of China dated November 15, 2012 ("Petition").

Period of Investigation

The period of investigation (“POI”) is April 1, 2012, through September 30, 2012.²

The Petition

In accordance with section 732(b) of the Tariff Act of 1930, as amended (“the Act”), Petitioner alleges that imports of silica bricks from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that, as an interested party, as defined in section 771(9)(C) of the Act, Petitioner filed the Petition on behalf of the domestic industry and has demonstrated sufficient industry support with respect to the Petition (*see* “Determination of Industry Support for the Petition” section below).

Scope of Investigation

The products covered by the scope of this investigation are silica bricks from the PRC. For a full description of the scope of the investigation, *see* “Scope of Investigation” in Appendix I of this notice.

Comments on Scope of Investigation

² *See* 19 CFR 351.204(b)(1).

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the product for which the domestic industry is seeking relief.³ Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by December 26, 2012, 5:00 PM Eastern Standard Time, 21 calendar days from the signature date of this notice.⁴ All comments should be filed on the record of this antidumping investigation using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS").⁵ An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

Comments on Product Characteristics for Antidumping Duty Questionnaire

We are requesting comments from interested parties regarding the appropriate physical characteristics of silica bricks to be reported in response to the Department's antidumping

³ See Memorandum to the File from Whitney Schablik, Import Policy Analyst, entitled "Phone Call to Counsel for Petitioner," dated November 21, 2012; *see also* Memorandum to the File from Rebecca Pandolph, International Trade Analyst, Office 4, AD/CVD Operations regarding "Petition for the Imposition of Antidumping Duties on Imports of Silica Bricks and Shapes from the People's Republic of China: Conference Call" dated November 29, 2012.

⁴ Because the normal 20 day deadline falls on a federal holiday, the appropriate deadline is the next business day.

⁵ See, generally, 19 CFR 351.303; *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using IAACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

questionnaire. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to more accurately report the relevant factors of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use in defining unique products. We note that it is not always appropriate to use all product characteristics to define products. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe silica bricks, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaire, we must receive comments filed electronically using IA ACCESS by 5:00 PM on December 26, 2012. Additionally, rebuttal comments must be received by 5:00 PM on January 4, 2013.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50

percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry if there is a large number of producers in the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,⁶ they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.⁷

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the

⁶ See section 771(10) of the Act

⁷ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

information submitted on the record, we have determined that silica bricks constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.⁸

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of Investigation” section above. To establish industry support, Petitioner demonstrated that it was the sole producer of the domestic like product and provided its production quantity for the domestic like product for the year 2011.⁹ We have relied upon data Petitioners provided for purposes of measuring industry support.¹⁰

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that Petitioner has met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because Petitioner accounts for at least 25 percent of the total production of the domestic like product.¹¹ Based on information provided in the Petition and other submissions, Petitioner has met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because Petitioner accounts for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.¹²

⁸ See Antidumping Duty Investigation Initiation Checklist: Silica Bricks and Shapes from the People’s Republic of China (“Initiation Checklist”), at Attachment II, Analysis of Industry Support for the Petitions Covering Silica Bricks and Shapes from the People’s Republic of China, on file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

⁹ See Petition, at 5 and Exhibits 1 and 9.

¹⁰ See Initiation Checklist at Attachment II.

¹¹ See Initiation Checklist at Attachment II.

¹² *Id.*

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigation it is requesting the Department initiate.¹³

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (“NV”). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act. Petitioner contends that the industry’s injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenue; reduced capacity utilization and stunted production and shipments; reduced employment, hours worked, and wages paid; and decline in financial performance.¹⁴ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.¹⁵

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of silica bricks

¹³ *Id.*

¹⁴ See Petition, at 17-25 and Exhibits 1, 8-9, and 11; see also Lost Sales and Revenue Supplement; see also First Supplement to the Petition, at questions 5-7.

¹⁵ See Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petition Covering Silica Bricks and Shapes from the People’s Republic of China.

from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the Initiation Checklist.¹⁶

U.S. Price

Petitioner calculated an export price (“EP”) based on price quotes for silica bricks from seven PRC producers of silica bricks.¹⁷ Petitioner substantiated the U.S. price quotes with price quotes received from the Chinese producers and an affidavit explaining that the price quotes were obtained in response to email queries.¹⁸ The terms of sale for these invoices were free on board (“FOB”) China port. Petitioners conservatively made no adjustments to U.S. price.¹⁹

Normal Value

Petitioner claims the PRC is a non-market economy (“NME”) country and that this designation remains in effect today.²⁰ The presumption of NME status for the PRC has not been revoked by the Department and, therefore, in accordance with section 771(18)(C)(i) of the Act, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the investigation is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issues of the PRC’s NME status and the granting of separate rates to individual exporters.

Petitioner contends that Ukraine is the appropriate surrogate country for the PRC because: 1) it is at a level of economic development comparable to that of the PRC, 2) it is a significant producer of identical merchandise, and 3) the availability and quality of data are

¹⁶ See Initiation Checklist, at 5-7.

¹⁷ See Petition, at 15 and Exhibits 5 and 6.

¹⁸ See Petition, at Exhibit 6; *see also* First Supplement to the Petition, at Exhibit 12.

¹⁹ See First Supplement to the Petition, at questions 9-10.

²⁰ See Petition, at 14.

good.²¹ Based on the information provided by Petitioner, we believe that it is appropriate to use Ukraine as a surrogate country for initiation purposes.²² After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioner calculated NV and the dumping margins using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. In calculating NV, Petitioner based the quantity of each of the inputs used to manufacture the subject merchandise on its own consumption experience, which Petitioner asserts that, to the best of its knowledge, is similar to the consumption of PRC producers.²³

Factors of production values were based on reasonably available, public surrogate country data, specifically, Ukraine import data from the Global Trade Atlas ("GTA").²⁴ In addition, Petitioner made currency conversions, where necessary, based on the POI-average hryvnia/U.S. dollar exchange rate based on Federal Reserve exchange rates.²⁵ The Department determines that the surrogate values used by Petitioner are reasonably available and, thus, acceptable for purposes of initiation.

Petitioner determined energy costs using reasonably available information.²⁶ Petitioner valued electricity using Ukrainian electricity rate for grade 1 and 2 voltage reported by the National Electricity Regulatory Commission of Ukraine. Petitioner valued natural gas using a

²¹ See Petition, at 14-15.

²² See Initiation Checklist at 6.

²³ See Petition, at 16; *see also* First Supplement to the Petition at answers to questions 13-14.

²⁴ See Initiation Checklist; *see also* Petition, at Exhibit 5; *see also* First and Second Supplements to the Petition, both at Exhibits 5.

²⁵ See *id.*

²⁶ See *id.* (for all surrogate values used to value energy inputs).

price quote in a March 19, 2012 article from UPI.com. Petitioner valued propane using November 15, 2011 prices from Argus International LPG. Petitioner did not inflate the surrogate value for propane because the value only changes periodically and not regularly with inflation.²⁷ Lastly, Petitioner valued water based on Utilities Ministry of Ukraine data.

Petitioner determined labor consumption, in hours, using its own production experience. Petitioner valued labor using data collected by the International Labor Organization (“ILO”) and disseminated in Chapter 6A of the ILO Yearbook of Labor Statistics.²⁸ Petitioner adjusted labor costs using consumer price index data published by the International Monetary Fund.

Petitioner determined packing material consumption using reasonably available information. The relevant factors were then valued using data from GTA.²⁹

Financial ratios for factory overhead and selling, general and administrative expenses were based on data from the 2011 financial statements of Krasnogorivskij Refractory Plant, a Ukrainian producer of refractory bricks.³⁰

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of silica bricks from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. prices and NV calculated in accordance with section 773(c) of the Act, as described above, the estimated dumping margins range from 118.47 percent to 290.12 percent.³¹

²⁷ See First Supplement to the Petition at the answers to question 30.

²⁸ See Initiation Checklist; see also First Supplement to the Petition at Exhibits 5.

²⁹ See Initiation Checklist; see also Petition, at Exhibit 5; see also First and Second Supplements to the Petition, both at Exhibits 5.

³⁰ See *id.*

³¹ See Initiation Checklist; see also Second Supplement to the Petition, at Exhibit 5.

Initiation of Antidumping Duty Investigation

Based upon our examination of the Petition on silica bricks from the PRC, the Department finds the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of silica bricks from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Application of an Alternative Comparison Methodology

Pursuant to 19 CFR 351.414(c)(1) (2012), in calculating the weighted-average dumping margins in this investigation, the Department will compare weighted-average EPs (or constructed export prices) with weighted-average NVs (the average-to-average method) unless it is determined that another method is appropriate in a particular case. If any interested party wishes to request that the Department consider whether it is appropriate in this investigation to apply an alternative comparison methodology pursuant to 19 CFR 351.414(c)(1) (2012), such requests are due no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection

Petitioner identified 10 PRC producers/exporters of silica bricks. The Department will issue quantity and value questionnaires to each of the 10 producers/exporters of silica bricks named in the Petition, and will make its respondent selection decision based on the responses to the questionnaires it receives. Parties that do not receive a quantity and value questionnaire from the Department may file a quantity and value questionnaire by the applicable deadline if they

wish to be included in the pool of companies from which the Department will select mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. On the date of the publication of this initiation notice in the *Federal Register*, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration web site at (<http://ia.ita.doc.gov/ia-highlights-and-news.html>). In order for the Department to consider a quantity and value questionnaire response, we must receive the response filed electronically using IA ACCESS by no later than 5:00 PM on December 26, 2012.³²

Interested parties must submit applications for disclosure under administrative protective order (“APO”) in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department’s web site at (<http://ia.ita.doc.gov/apo>).

Separate-Rate Application

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application.³³ The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department’s web site at (<http://ia.ita.doc.gov/ia-highlights-and-news.html>) on the date of publication of this initiation notice in the *Federal Register*. The separate-rate application must be filed electronically with the Department using IA ACCESS by

³² See *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People’s Republic of China*, 70 FR 21996, 21999 (April 28, 2005).

³³ See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 5, 2005 (“Policy Bulletin”), available on the Department’s web site at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

no later than 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the “Respondent Selection” section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate-rate status. The quantity and value questionnaire will be available on the Department’s website at (<http://ia.ita.doc.gov/ia-highlights-and-news.html>) on the date of the publication of this initiation notice in the *Federal Register*.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The relevant Policy Bulletin states:

While continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.³⁴

³⁴ See Policy Bulletin at 6 (emphasis added).

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the representatives of the Government of the PRC. The Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than December 31, 2012, whether there is a reasonable indication that imports of silica bricks from the PRC are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634. Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.³⁵ Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceeding initiated on or after March 14, 2011 as supplemented.³⁶ The formats for the revised certifications are provided at the end of the Interim Final Rule. The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

December 5, 2012 _____
Date

³⁵ See section 782(b) of the Act.

³⁶ See *Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings: Interim Final Rule*, 76 FR 7491 (February 10, 2011) (“Interim Final Rule”) as supplemented 76 FR 54697 (September 2, 2011) (this rulemaking modified 19 CFR 351.303(g)(1) and (2)).

Appendix I

Scope of the Investigation

The products covered by the scope of this investigation are bricks and shapes, regardless of size, containing at least 90 percent silica (also known as silicon dioxide (SiO_2)), regardless of other materials in the bricks and shapes. The products covered by the scope of this investigation are currently classified under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 6902.20.1020 and 6902.20.5020. Imports of subject merchandise may also be entered under HTSUS subheading 6901.00.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

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